

No. 12,516

IN THE

United States Court of Appeals  
For the Ninth Circuit

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FOON GOON MOK,

*Appellant,*

VS.

UNITED STATES OF AMERICA,

*Appellee.*

REPLY BRIEF FOR APPELLANT.

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**CONTENTIONS OF APPELLEE.**

Appellee contends that moral character is a question of fact and that the petitioner under the section under which appellant filed his petition is required to show good conduct for a "reasonable period" of time *prior* to the filing of his application for naturalization and that appellant's conduct preceeding the filing of his petition does not meet the test of such a rule or, to put it another way, appellee argues that the District Court, in considering a petition under this section of the Nationality Act of 1940, which has deleted residential requirements, is permitted to consider petitioner's antecedent conduct and that appellant did not establish good moral character prior to the filing of his petition for naturalization.

**ARGUMENT.**

Appellee cites many cases to the effect that an applicant for citizenship has good moral character when his conduct conforms to generally accepted moral conventions current to the time. From these cases he concludes that appellant's actions in appearing as a witness upon his friend's petition for naturalization in 1946, his false statements concerning his marital status and appellant's various claims to birth in the United States, do not meet the test of this rule. Appellant first made his false claim to being born in the United States in 1942; his last such claim was made in August 1948. He appeared as a witness for another and claimed citizenship in 1946. His false information concerning his marital status was given when he entered the Army in 1942, before the American consul in 1947 and when he attempted to reenter the United States in August 1948. It thus appears that the false claim in support of his friend's passport application was made approximately three years before appellant filed his application for citizenship, his false claim of citizenship and marital status were last made in August 1948. The petition was filed six months later on February 28, 1949, and the hearing was had in December, 1949, a year and four months after appellant's last misconduct.

Without in any way minimizing appellant's actions in appearing as a witness in support of his friend's passport application in 1946, we respectfully urge that this act, occurring approximately three years before the filing of his application for naturalization, should not be a bar to the same.

The cases cited by appellee, commencing on page 12 of his brief, merely show that each petition must be decided on its own particular facts and all cases were under the "five year rule".

In *In re Bonner* (279 Fed. 789), the petitioner was arrested between the time the petition was filed and a hearing had at which time the court reserved judgment on the petition until after the petitioner had pleaded guilty.

In *Petition of Zele* (140 Fed. (2d) 773), the court stated:

"Under the law the burden is on the petitioner to establish good moral character *only* during the five year period, *not earlier*, and it has consistently been construed liberally so as to sanction forgiveness after the expiration of five years from the date of a disbarring misdeed." (Italics added.)

In *In re Paoli* (49 Fed. Sup. 128) the petitioner was convicted under the state law of violating a section of the California Alcoholic Beverage Act, a felony, and was granted three years probation. The record of conviction was subsequently expunged in accordance with the California law, and the court admitted the petitioner to citizenship.

In *Petition of Ledo* (67 Fed. Sup. 917), the petitioner made false claims to citizenship during the five-year period.

*In re Bookschnis* (61 Fed. Sup. 751), involved a petitioner who had been found guilty of violating the

Interstate Commerce Act in forty-two counts. The court held that "although there is necessity to maintain strict regulations of carrier lines and although a curb of rebating should be rigidly maintained there is no essential immorality involved in the actions of the defendant" and *granted* the petition for naturalization.

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**WHAT IS THE PRESCRIBED PERIOD DURING WHICH GOOD MORAL CHARACTER SHALL BE ESTABLISHED.**

Appellee cites cases commencing on page 12 and again on page 15 of its brief which have been decided under the provisions of the Nationality Act which require five years of continuous United States residence and good moral character "during all the periods referred to." From these cases, some of which hold that the court may make inquiry previous to the five-year period and others of which hold that the facts developed by such an inquiry cannot be used as the basis for disqualification appellee argues that the court is not limited in its inquiry concerning a naturalization applicant's moral character to the period of residence required to be established. Appellee then concludes in the case of appellant, who is not required to establish any residence period, that the court can inquire concerning his conduct for a reasonable period of time prior to the date of his filing of his application for naturalization. The cases cited by appellee are not helpful in sustaining this conclusion.



In *In re Taran* (52 Fed. Sup. 535), the petition was filed three and one-half years after the petitioner was released from prison.

The petitioner in the *Petition of Gabin* (60 Fed. Sup. 750), during the five-year period prior to the filing of the application, performed no useful work nor labor and was supported either by relief agencies or his own family and had reached seventy years of age before making application for citizenship. The court observed that there was no "showing of conduct of a more positive nature or character indicative of a real apprehension of the obligations of citizenship or of sacrifices made or contributed to the public weal."

The petitioner in *In re Balestrieri* (59 Fed. Sup. 181) had been convicted of murder and sentenced to life imprisonment. The court impliedly held that he had been rehabilitated when it admitted him to citizenship.

*In re Lipsitz* (79 Fed. Sup. 954) involved a petitioner who had served ten years in prison for a crime of attempted extortion of money and also for assault in connection with a conspiracy to kidnap and the actual kidnapping of a young man. The court observed:

"Each case must be decided on its own particular facts."

The case *In re Laws* (59 Fed. Sup. 179) is not in point. In that case naturalization was sought under provisions of the law which permit the naturalization of aliens who marry citizens after one year of resi-

dence. The petitioner had been convicted of a crime of uttering false checks and had been discharged from parole during the five year period. The District Court judge properly held that such an alien must still prove good behavior for five years as "Congress clearly did not intend that the circumstance of marriage by an alien to an American citizen spouse should relieve a petitioner from substantial requirements of good behavior prescribed for all other aliens."

This is substantially different from the section under which appellant filed his petition which, from a reading of the Congressional Report which accompanied the bill, is a section to reward aliens who have served honorably in the Armed Forces by permitting them to acquire citizenship through naturalization without the necessity of going through certain processes required of non-service people.

Appellee agrees with appellant that there appears to be no reported case on the exact point as to what period of time the appellant, under the section under which he has applied for naturalization, must establish good moral character. It cites certain unreported cases, to which appellant does not have access, and all of which appear to be lower court cases.

It should be noted that in one case (Do Quay Lew) the application for citizenship was granted where the petitioner had falsely claimed United States citizenship six months prior to the filing of the petition. Do Quay Lew filed his petition under the same section as appellant and the Immigration Board of Special

Inquiry held that the petitioner's Army service outweighed in general his false testimony on the issue of his moral character. The decision of the Immigration Board of Special Inquiry should be persuasive in view of appellant's own excellent Army service record.

In another of the unreported cases cited in appellee's brief, that of Alexander Andrew Bariatinsky, the petitioner was granted citizenship four years after he had been denied naturalization by the United States District Court, and one year, or less, after his probation for criminal conviction based upon false claims to citizenship had expired. Appellee's brief, page 20, states Bariatinsky was convicted in 1946, placed on probation for two years and granted citizenship in April of 1949.

Thus from these unreported cases it can be seen that the decisions are in conflict as to what constitutes a reasonable time. In one case it is six months after a false claim to citizenship, in another three years after conviction and still another (Ming Fong Lee) the fact that two years had expired after his false claim to United States citizenship was deemed insufficient.

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### CONCLUSION.

Appellant respectfully submits that the affidavits that accompanied his petition and which stated that each of the affiants personally knew him to be a person of good moral character and his honorable discharge from the Army should, at the very least, be

*prima facie* evidence of good moral character. He respectfully urges that the order of the District Court denying his application for citizenship was improper and respectfully prays that its decision be reversed and he be admitted to United States citizenship.

Dated, San Francisco, California,  
July 21, 1950.

Respectfully submitted,

KENNETH C. ZWERIN,

*Attorney for Appellant.*